IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

:: O R D E R ::

D.B. CIVIL WRIT PETITION (PIL)NO.1255/2005

Mewar Chamber of Commerce & Industry, Bhilwara & Anr.
Vs.
State of Rajasthan & Anr.

Date of Order :: 05-12-2007

HON'BLE THE ACTING CHIEF JUSTICE SHRI RAJESH BALIA
HON'BLE SHRI JUSTICE BHANWAROO KHAN

Mr. T. Gupta, for the petitioners.
Mr. J.P. Joshi, for the respondent.

This petition is filed alleging that State Government has imposed the pollution tax to be levied and collected by Municipalities in Rajasthan and in pursuance of that, the Municipal Council, Bhilwara has levied and collected pollution tax. It is further alleged that 75% of the revenue collected as pollution tax was to be utilised by the Municipal Council in the area for improvement of environment and eradication of pollution problem as per the clarification issued by the State Government. However, the Municipal Council,Bhilwara is not adhered to this guideline and more than 25% of the amount of the revenue collected as the pollution tax has been used for purpose other than for improvement of environment and eradication of the pollution problem. The petitioner is an association of trade and industry in Bhilwara where the large number of textile units are established which is a major threat to clean environment on account of injurious chemicals being used in the textile processing and effluent discharge by such industries, if not properly treated, poses the major pollution hazard.

Perhaps keeping in mind this aspect of the matter and the well established norms for meeting the pollution threat emanating from the textile industries, the principal prayer asked by the petitioner in this writ petition is to seek a mandamus against the Municipal Council to take initiative for establishment of the Common Effluent Treatment Plant (CETP) from the funds so far collected by way of pollution tax and complete the programme of CETP at an earliest.

In furtherance of directives of this Court after a long recess, the petitioner has furnished a self-serving certificate from the Rajasthan Textile Processors Association naming the 22 textile unit members that they all have own separate treatment plant and are not causing any pollution. No such attempt has been made to seek assistance from the Pollution Control Board for inspection of their factories and for securing such a clean-chit from the Rajasthan Pollution Control Board.

Be that as it may, it is now not in dispute that as per the prevailing enunciation of law when the pollution tax was collected, the Municipal Council instead of utilisting entire pollution tax, which obviously was a compensatory tax for the purpose for which the tax is collected, a substantial part of it was spent to discharge its other obligation as a civic body for the purpose of maintenance of the city sanitation, drainage, market places, etc. Obviously, pollution tax being a compensatory tax, the tax collected of this nature must be used for the purpose for which tax is levied

after adjusting cost of levy and collection of such tax. It is also not in dispute that pollution tax collection and utilisation has not been in terms of above principle in the present case.

However, since the pollution tax has already been abolished even before filing of the writ petition, the question of examining further that the authority of the Municipal Council to collect the pollution tax is not the subject matter of this petition.

It is stated by the learned counsel for the Municipal Council that the remaining amount of pollution tax collection which is lying with the Municipal Council has been set apart for the purpose of utilisting towards environment improvement and eradication of pollution. It was also pointed out that the normal practice adopted in the matter of setting up the CETP at all over the places where textile industries are settled is to create a trust or fund under the control of District authorities and the amount of tax is to be transferred thereto. It was also pointed out that in setting up of the CETP, the trade and industry contributes who are running the textile industries and are causing a possible threat of pollution eradication. This part is also not disputed.

Learned counsel for the petitioner stated that the trade and industry is prepared to contribute towards setting up of CETP with the Municipal Council.

The only issue raised by the learned counsel for the petitioner is that to the extent amount has not been spent in past on environment development and pollution control by the Municipal Council out of the pollution tax collected by it should be replenished by its other sources.

We are of the opinion in totality of circumstances that there being no case that the Municipality has not spent the other part of the revenue towards providing facilities to the citizens by carrying out works of public purpose in discharge of its normal duty as a civic body, it cannot be said that on account of such direction of funds of the pollution tax towards other welfare activities carried out by the Municipal Council, any public interest has suffered so as to warrant such a mandamus as to replenish the funds spent on other public benefit activities towards the pollution control activities, particularly when the trade and industry is equally responsible to restrain themselves from causing pollution degradation by their activities and are under an obligation to contribute towards setting up CETP which the petitioners' main relief is.

In these circumstances, we deem it appropriate to dispose of this writ petition with direction that the available funds out of the pollution tax which has been set apart by the Municipal Council be transferred to a trust being set up for the purpose of establishing CETP at Bhilwara and the setting up CETP shall be undertaken by the said trust to be constituted of the District Collector, Chief Executive Officer of the Municipal

Council, an officer not below the rank of Deputy Director nominated by the RIICO and the President of the petitioner's association. If any amount needed in addition to the funds so transferred to the trust, shall be contributed by the members, textile industries of Bhilwara. We do not find any justification for issuing direction to replenish the deficit pollution control tax which has not been utilised by the Municipal Council for the purpose to bring the level of 75% of the revenue collected.

The petition stands disposed of.

No costs.

[BHANWAROO KHAN],J. [RAJESH BALIA],ACTG.CJ.

Praveen